

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

IN THE HAMILTON SUPERIOR COURT
SS:
CAUSE NO.: 29D03-0710-CC-1206

STATE OF INDIANA,)

Plaintiff,)

v.)

ROD HARDESTY and)
NATHAN MERTZ, individually)
and doing business as)
ADVANCED EXTERIORS, and)
WINDOWS DIRECT MIDWEST,)

Defendants.)

FILED
MAY 23 2008
Debra Beamer
CLERK OF THE
HAMILTON SUPERIOR COURT

**SECOND AMENDED COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General January Portteus, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. At all times relevant to this Complaint, the Defendant, Rod Hardesty, individually and doing business as Advanced Exteriors, was an individual engaged in

business as a home improvement contractor with a principal place of business in Hamilton County at 12544 Pointer Place, Fishers, Indiana 46038.

3. At all times relevant to this Complaint, the Defendant, Nathan Mertz, individually and doing business as Advanced Exteriors, was an individual engaged in business as a home improvement contractor with a principal place of business in Hamilton County at 12544 Pointer Place, Fishers, Indiana 46038.

4. At all times relevant to this Complaint, the Defendant Rod Hardesty, individually and doing business as Windows Direct Midwest, was an individual engaged in business as a home improvement contractor with principal places of business in Hamilton County at 203 E. 106th Street, Indianapolis, Indiana 46280 and in Allen County at 7990 Winston Lane, Fort Wayne, Indiana 46804.

5. At all times relevant to this Complaint, the Defendant Nathan Mertz, individually and doing business as Windows Direct Midwest, was an individual engaged in business as a home improvement contractor with principal places of business in Hamilton County at 203 E. 106th Street, Indianapolis, Indiana 46280 and in Allen County at 7990 Winston Lane, Fort Wayne, Indiana 46804.

FACTS

6. Since at least August 15, 2006 the Defendants have entered into home improvement contracts with Indiana consumers.

A. Allegations Related to Defendants' Consumer Transaction with James R. Snyder

7. On or about August 15, 2006 the Defendants entered into a contract with Rev. James R. Snyder ("Snyder") of Fishers, Indiana, wherein the Defendants represented they would repair Snyder's roof and Snyder paid Six Thousand Fifty Dollars

and Fifty Cents (\$6,050.50) as a down payment. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contract Snyder received.

8. The Defendants failed to include the following information in the contract with Snyder:

- a. the approximate starting and completion dates of the proposed home improvements;
- b. a statement of contingencies that would materially change the approximate completion date;
- c. the home improvement contract price; and
- d. a legible printed or typed version of each party's name directly after or below the signature on the contract.

9. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

10. The Defendants failed to obtain the necessary permit, as required by the Town of Fishers Code of Ordinances § 155.10, prior to commencing any work under their agreement with Snyder.

11. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

12. The Defendants have neither completed the work nor issued a refund to Snyder.

B. Allegations Related to Defendants' Consumer Transaction with Donald F. Adams

13. On or about August 8, 2007 Defendants entered into a contract with Donald F. Adams ("Adams") of Fort Wayne, Indiana, wherein the Defendants represented they would sell and install four (4) windows in Adams' home, for a total price of Eight Hundred Sixty One Dollars (\$861.00), of which Adams paid Four Hundred Thirty Dollars (\$430.00) as a down payment. Attached and incorporated by reference as "Exhibit B" is a true and accurate copy of the contract Adams received.

14. The Defendants failed to include the following in their contract with Adams:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

15. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

17. The Defendants have not delivered the windows, completed the work, nor issued a refund to Adams.

C. Allegations Related to Defendants' Consumer Transaction with Jeannine Qualls

18. On or about September 27, 2007 Defendants entered into a contract with Jeannine Qualls (“Qualls”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install four (4) windows in Qualls’ home, for a total price of Six Hundred Ninety Six Dollars (\$696.00), of which Qualls paid Three Hundred Forty Eight Dollars (\$348.00) as a down payment. Attached and incorporated by reference as “Exhibit C” is a true and accurate copy of the contract Qualls received.

19. The Defendants failed to include a legible printed or typed version of each party’s name directly after or below the signature on the contract in their contract with Qualls.

20. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

21. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four weeks.

22. The Defendants have not delivered the windows, completed the work, nor issued a refund to Qualls.

D. Allegations Related to Defendants’ Consumer Transaction with Rob Page

23. On or about October 18, 2007 Defendants entered into a contract with Rob Page (“Page”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install seven (7) windows in Page’s home, for a total price of One Thousand Three Hundred Ninety One Dollars (\$1,391.00), of which Page paid Six Hundred Ninety Five Dollars (\$695.00) as a down payment. Attached and incorporated by reference as “Exhibit D” is a true and accurate copy of the contract Page received.

24. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Page.

25. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

26. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

27. The Defendants have not delivered the windows, completed the work, nor issued a refund to Page.

E. Allegations Related to Defendants' Consumer Transaction with Mark Friedley

28. On or about September 8, 2007 Defendants entered into a contract with Mark Friedley ("Friedley") of Fort Wayne, Indiana, wherein the Defendants represented they would sell and install seventeen (17) windows in Friedley's home, for a total price of Two Thousand Nine Hundred Sixty Five Dollars (\$2,965.00), of which Friedley paid One Thousand Four Hundred Eighty Five Dollars (\$1,485.00) as a down payment. Attached and incorporated by reference as "Exhibit E" is a true and accurate copy of the contract Friedley received.

29. The Defendants failed to include the following in their contract with Friedley:

- a. the approximate starting and completion dates of the proposed home improvements; and

- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

30. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

31. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

32. The Defendants have not delivered the windows, completed the work, nor issued a refund to Friedley.

F. Allegations Related to Defendants' Consumer Transaction with Judith Weaver

33. On or about October 10, 2007 Defendants entered into a contract with Judith Weaver ("Weaver") of Fishers, Indiana, wherein the Defendants represented they would sell and install seven (7) windows in Weaver's home, for a total price of One Thousand Four Hundred Thirty Four Dollars (\$1,434.00), of which Weaver paid Seven Hundred Seventeen Dollars (\$717.00) as a down payment. Attached and incorporated by reference as "Exhibit F" is a true and accurate copy of the contract Weaver received.

34. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Weaver.

35. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

36. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

37. The Defendants have not delivered the windows, completed the work, nor issued a refund to Weaver.

G. Allegations Related to Defendants' Consumer Transaction with Steve Wilson

38. On or about August 30, 2007 Defendants entered into a contract with Steve Wilson ("Wilson") of Lebanon, Indiana, wherein the Defendants represented they would sell and install six (6) windows in Wilson's home, for a total price of One Thousand Forty Four Dollars (\$1,044.00), of which Wilson paid Five Hundred Twenty Two Dollars (\$522.00) as a down payment. Attached and incorporated by reference as "Exhibit G" is a true and accurate copy of the contract Wilson received.

39. The Defendants failed to include the following in their contract with Wilson:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

40. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

41. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

42. The Defendants have not delivered the windows, completed the work, nor issued a refund to Wilson.

H. Allegations Related to Defendants' Consumer Transaction with Bobby Jones

43. On or about September 11, 2007 Defendants entered into a contract with Bobby Jones ("Jones") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install seven (7) windows in Jones' home, for a total price of One Thousand Seven Hundred Thirty Seven Dollars (\$1,737.00), of which Jones paid Eight Hundred Sixty Eight Dollars (\$868.00) as a down payment. Attached and incorporated by reference as "Exhibit H" is a true and accurate copy of the contract Jones received.

44. The Defendants failed to include the following in their contract with Jones:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

45. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

46. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

47. The Defendants have not delivered the windows, completed the work, nor issued a refund to Jones.

I. Allegations Related to Defendants' Consumer Transaction with Sherry McGinnis

48. On or about August 29, 2007 Defendants entered into a contract with Sherry McGinnis ("McGinnis") of Clayton, Indiana, wherein the Defendants represented they would sell and install twenty-one (21) windows in McGinnis' home, for a total price of Four Thousand Four Hundred Ninety Eight Dollars (\$4,498.00), of which McGinnis paid Two Thousand Two Hundred Forty Nine Dollars (\$2,249.00) as a down payment. Attached and incorporated by reference as "Exhibit I" is a true and accurate copy of the contract McGinnis received.

49. The Defendants failed to include the following in their contract with McGinnis:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

50. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

51. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

52. The Defendants have not delivered the windows, completed the work, nor issued a refund to McGinnis.

J. Allegations Related to Defendants' Consumer Transaction with Mia Kum

53. On or about October 4, 2007 Defendants entered into a contract with Mia Kum (“Kum”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install fifteen (15) windows in Kum’s home, for a total price of Three Thousand Four Hundred Ten Dollars (\$3,410.00), of which Kum paid One Thousand Eight Hundred Dollars (\$1,800.00) as a down payment. Attached and incorporated by reference as “Exhibit J” is a true and accurate copy of the contract Kum received.

54. The Defendants failed to include a legible printed or typed version of each party’s name directly after or below the signature on the contract in their contract with Kum.

55. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

56. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

57. The Defendants have not delivered the windows, completed the work, nor issued a refund to Kum.

K. Allegations Related to Defendants’ Consumer Transaction with James P. Hoff

58. On or about October 22, 2007 Defendants entered into a contract with James P. Hoff (“Hoff”) of Fortville, Indiana, wherein the Defendants represented they would sell and install nineteen (19) windows in Hoff’s home, for a total price of Three Thousand Nine Hundred Forty Four Dollars (\$3,944.00), of which Hoff paid One Thousand Nine Hundred Seventy Two Dollars (\$1,972.00) as a down payment. Attached

and incorporated by reference as “Exhibit K” is a true and accurate copy of the contract Hoff received.

59. The Defendants failed to include a legible printed or typed version of each party’s name directly after or below the signature on the contract in their contract with Hoff.

60. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

61. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

62. The Defendants have not delivered the windows, completed the work, nor issued a refund to Hoff.

L. Allegations Related to Defendants’ Consumer Transaction with Kenneth D. Crum

63. On or about August 3, 2007 Defendants entered into a contract with Kenneth D. Crum (“Crum”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install fourteen (14) windows in Crum’s home, for a total price of Two Thousand Five Hundred Seven Dollars (\$2,507.00), of which Crum paid One Thousand Two Hundred Fifty Dollars (\$1,250.00) as a down payment. Attached and incorporated by reference as “Exhibit L” is a true and accurate copy of the contract Crum received.

64. The Defendants failed to include the following in their contract with Crum:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

65. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

66. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

67. The Defendants have not delivered the windows, completed the work, nor issued a refund to Crum.

M. Allegations Related to Defendants' Consumer Transaction with Joe Harris

68. On or about November 5, 2007 Defendants entered into a contract with Joe Harris ("Harris") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install eleven (11) windows in Harris' home, for a total price of Two Thousand Two Hundred Twenty Dollars (\$2,220.00), of which Harris paid One Thousand One Hundred Ten Dollars (\$1,110.00) as a down payment. Attached and incorporated by reference as "Exhibit M" is a true and accurate copy of the contract Harris received.

69. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Harris.

70. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

71. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

72. The Defendants have not delivered the windows, completed the work, nor issued a refund to Harris.

N. Allegations Related to Defendants' Consumer Transaction with Julius G. Thompson

73. On or about September 19, 2007 Defendants entered into a contract with Julius G. Thompson ("Thompson") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install six (6) windows in Thompson's home, for a total price of One Thousand Forty Four Dollars (\$1,044.00), of which Thompson paid Five Hundred Twenty Two Dollars (\$522.00) as a down payment. Attached and incorporated by reference as "Exhibit N" is a true and accurate copy of the contract Thompson received.

74. The Defendants failed to include the following in their contract with Thompson:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

75. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

76. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

77. The Defendants have not delivered the windows, completed the work, nor issued a refund to Thompson.

O. Allegations Related to Defendants' Consumer Transaction with Benjamin Awana

78. On or about November 11, 2007 Defendants entered into a contract with Benjamin Awana ("Awana") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install four (4) windows in Awana's home, for a total price of Seven Hundred Fifty Nine Dollars (\$759.00), of which Awana paid Three Hundred Seventy Nine Dollars (\$379.00) as a down payment. Attached and incorporated by reference as "Exhibit O" is a true and accurate copy of the contract Awana received.

79. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Awana.

80. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

81. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately six to eight weeks.

82. The Defendants have not delivered the windows, completed the work, nor issued a refund to Awana.

P. Allegations Related to Defendants' Consumer Transaction with Donnie L. Twyman

83. On or about September 29, 2007 Defendants entered into a contract with Donnie L. Twyman ("Twyman") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install eight (8) windows in Twyman's home, for a total price of One Thousand Three Hundred Ninety Two Dollars (\$1,392.00), of which Twyman paid Six Hundred Ninety Six Dollars (\$696.00) as a down payment. Attached and incorporated by reference as "Exhibit P" is a true and accurate copy of the contract Twyman received.

84. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Twyman.

85. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

86. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

87. The Defendants have not delivered the windows, completed the work, nor issued a refund to Twyman.

Q. Allegations Related to Defendants' Consumer Transaction with Chad Saalfrank

88. On or about October 1, 2007 Defendants entered into a contract with Chad Saalfrank ("Saalfrank") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install twenty-five (25) windows in Saalfrank's home, for a total

price of Five Thousand One Hundred Twenty Four Dollars (\$5,124.00), of which Saalfrank paid Two Thousand Five Hundred Sixty Two Dollars (\$2,562.00) as a down payment. Attached and incorporated by reference as “Exhibit Q” is a true and accurate copy of the contract Saalfrank received.

89. The Defendants failed to include a legible printed or typed version of each party’s name directly after or below the signature on the contract in their contract with Saalfrank.

90. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

91. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

92. The Defendants have not delivered the windows, completed the work, nor issued a refund to Saalfrank.

R. Allegations Related to Defendants’ Consumer Transaction with Lieng Shanks

93. On or about August 31, 2007 Defendants entered into a contract with Lieng Shanks (“Shanks”) of Logansport, Indiana, wherein the Defendants represented they would sell and install sixteen (16) windows in Shanks’ home, for a total price of Two Thousand Seven Hundred Thirty Five Dollars (\$2,735.00), of which Shanks paid One Thousand Three Hundred Forty Two Dollars (\$1,342.00) as a down payment. Attached and incorporated by reference as “Exhibit R” is a true and accurate copy of the contract Shanks received.

94. The Defendants failed to include the following in their contract with Shanks:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

95. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

96. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

97. The Defendants have not delivered the windows, completed the work, nor issued a refund to Shanks.

S. Allegations Related to Defendants' Consumer Transaction with Oleg Kheynis

98. On or about January 21, 2008 Defendants entered into a contract with Oleg Kheynis ("Kheynis") of Carmel, Indiana, wherein the Defendants represented they would sell and install eight (8) windows in Kheynis' home, for a total price of Three Thousand Six Hundred Sixty Seven Dollars (\$3,667.00), of which Kheynis paid One Thousand Eight Hundred Thirty Seven Dollars (\$1,837.00) as a down payment. Attached and incorporated by reference as "Exhibit S" is a true and accurate copy of the contract Kheynis received.

99. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Kheynis.

100. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

101. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

102. The Defendants have not delivered the windows, completed the work, nor issued a refund to Kheynis.

T. Allegations related to Defendants' Consumer Transaction with Adelaide Maynard

103. On or about October 12, 2007 Defendants entered into a contract with Adelaide Maynard ("Maynard") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install eight (8) windows in Maynard's home, for a total price of One Thousand Four Hundred Thirty Three Dollars (\$1,433.00), of which Maynard paid Seven Hundred Sixteen Dollars (\$716.00) as a down payment. Attached and incorporated by reference as "Exhibit T" is a true and accurate copy of the contract Maynard received.

104. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Maynard.

105. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

106. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

107. The Defendants have not delivered the windows, completed the work, nor issued a refund to Maynard.

U. Allegations related to Defendants' Consumer Transaction with Henry Wheatley

108. On or about October 27, 2007 Defendants entered into a contract with Henry Wheatley ("Wheatley") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install thirteen (13) windows in Wheatley's home, for a total price of Two Thousand Six Hundred Four Dollars (\$2,604.00), of which Wheatley paid One Thousand Six Hundred Four Dollars (\$1,604.00) as a down payment. Attached and incorporated by reference as "Exhibit U" is a true and accurate copy of the contract Wheatley received.

109. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Wheatley.

110. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

111. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to eight weeks.

112. The Defendants have not delivered the windows, completed the work, nor issued a refund to Wheatley.

V. Allegations Related to Defendants' Consumer Transaction with Rich Cooper

113. On or about October 4, 2007 Defendants entered into a contract with Rich Cooper ("Cooper") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install ten (10) windows in Cooper's home, for a total price of Two Thousand Eight Hundred Dollars (\$2,800.00), of which Cooper paid One Thousand Four Hundred Dollars (\$1,400.00) as a down payment. Attached and incorporated by reference as "Exhibit V" is a true and accurate copy of the contract Cooper received.

114. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Cooper.

115. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

116. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

117. The Defendants have not delivered the windows, completed the work, nor issued a refund to Cooper.

W. Allegations Related to Defendants' Consumer Transaction with Stan Bright

118. On or about October 4, 2007 Defendants entered into a contract with Stan Bright ("Bright") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install seventeen (17) windows in Bright's home, for a total price of Three Thousand Ninety Three Dollars (\$3,093.00), of which Bright paid One Thousand Six

Hundred Dollars (\$1,600.00) as a down payment. Attached and incorporated by reference as “Exhibit W” is a true and accurate copy of the contract Bright received.

119. The Defendants failed to include the following in their contract with Bright:

- a. the approximate starting and completion dates of the proposed home improvements; and
- b. a legible printed or typed version of each party’s name directly after or below the signature on the contract.

120. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

121. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

122. The Defendants have not delivered the windows, completed the work, nor issued a refund to Bright.

X. Allegations Related to Defendants’ Consumer Transaction with Raymond and Erin Spencer

123. On or about November 16, 2007 Defendants entered into a contract with Raymond and Erin Spencer (“the Spencers”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install twenty-six (26) windows in the Spencers’ home, for a total price of Five Thousand Two Hundred Eight Dollars (\$5,208.00), of which the Spencers paid Seven Hundred Eighty Seven Dollars (\$787.00) as a down payment. Attached and incorporated by reference as “Exhibit X” is a true and accurate copy of the contract the Spencers received.

124. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Spencers.

125. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

126. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately six to ten weeks.

127. The Defendants have not delivered the windows, completed the work, nor issued a refund to the Spencers.

Y. Allegations Related to Defendants' Consumer Transaction with Dennis Sandefur

128. On or about November 11, 2007 Defendants entered into a contract with Dennis Sandefur ("Sandefur") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install ten (10) windows in Sandefur's home, for a total price of Two Thousand Two Hundred Fifty Dollars (\$2,250.00), of which Sandefur paid One Thousand One Hundred Twenty Five Dollars (\$1,125.00) as a down payment. Attached and incorporated by reference as "Exhibit Y" is a true and accurate copy of the contract Sandefur received.

129. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Sandefur.

130. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

131. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

132. The Defendants have not delivered the windows, completed the work, nor issued a refund to Sandefur.

Z. Allegations Related to Defendants' Consumer Transaction with Larry A. Dean

133. On or about November 13, 2007 Defendants entered into a contract with Larry A. Dean ("Dean") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install eleven (11) windows in Dean's home, for a total price of Two Thousand One Hundred Ninety Nine Dollars (\$2,199.00), of which Dean paid One Thousand Ninety Nine Dollars (\$1,099.00) as a down payment. Attached and incorporated by reference as "Exhibit Z" is a true and accurate copy of the contract Dean received.

134. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Dean.

135. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

136. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately six to ten weeks.

137. The Defendants have not delivered the windows, completed the work, nor issued a refund to Dean.

AA. Allegations Related to Defendants' Consumer Transaction with Linda Vannatta

138. On or about October 17, 2007 Defendants entered into a contract with Linda Vannatta ("Vannatta") of Greenfield, Indiana, wherein the Defendants represented they would sell and install ten (10) windows in Vannatta's home, for a total price of Two Thousand Three Dollars (\$2,003.00), of which Vannatta paid One Thousand Dollars (\$1,000.00) as a down payment. Attached and incorporated by reference as "Exhibit AA" is a true and accurate copy of the contract Vannatta received.

139. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Vannatta.

140. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

141. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

142. The Defendants have not delivered the windows, completed the work, nor issued a refund to Vannatta.

BB. Allegations Related to Defendants' Consumer Transaction with Jon R. Robbins

143. On or about October 5, 2007 Defendants entered into a contract with Jon R. Robbins ("Robbins") of Cicero, Indiana, wherein the Defendants represented they would sell and install four (4) windows in Robbins' home, for a total price of Eight Hundred Nineteen Dollars (\$819.00), of which Robbins paid Four Hundred Nine Dollars

(\$409.00) as a down payment. Attached and incorporated by reference as “Exhibit BB” is a true and accurate copy of the contract Robbins received.

144. The Defendants failed to include a legible printed or typed version of each party’s name directly after or below the signature on the contract in their contract with Robbins.

145. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

146. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

147. The Defendants have not delivered the windows, completed the work, nor issued a refund to Robbins.

CC. Allegations Related to Defendants’ Consumer Transaction with Joseph B. Okey

148. Defendants entered into a contract with Joseph B. Okey (“Okey”) of Indianapolis, Indiana, wherein the Defendants represented they would sell and install fourteen (14) windows in Okey’s home, for a total price of Two Thousand Four Hundred Dollars (\$2,400.00), of which Okey paid One Thousand Two Hundred Dollars (\$1,200.00) as a down payment. Attached and incorporated by reference as “Exhibit CC” is a true and accurate copy of the contract Okey received.

149. The Defendants failed to include the following in their contract with Okey:

- a. the approximate starting and completion dates of the proposed home improvements; and

- b. a legible printed or typed version of each party's name directly after or below the signature on the contract.

150. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

151. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

152. The Defendants have not delivered the windows, completed the work, nor issued a refund to Okey.

DD. Allegations Related to Defendants' Consumer Transaction with Lucy Murphy

153. On or about November 19, 2007 Defendants entered into a contract with Lucy Murphy ("Murphy") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install twelve (12) windows in Murphy's home, for a total price of Two Thousand Five Hundred Dollars (\$2,500.00), of which Murphy paid One Thousand Two Hundred Fifty Dollars (\$1,250.00) as a down payment. Attached and incorporated by reference as "Exhibit DD" is a true and accurate copy of the contract Murphy received.

154. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Murphy.

155. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

156. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately six to eight weeks.

157. The Defendants have not delivered the windows, completed the work, nor issued a refund to Murphy.

EE. Allegations Related to Defendants' Consumer Transaction with Chris Johnstone

158. On or about October 2, 2007 Defendants entered into a contract with Chris Johnstone ("Johnstone") of Lebanon, Indiana, wherein the Defendants represented they would sell and install six (6) windows in Johnstone's home, for a total price of One Thousand Forty Four Dollars (\$1,044.00), of which Johnstone paid Five Hundred Twenty Two Dollars (\$522.00) as a down payment. Attached and incorporated by reference as "Exhibit EE" is a true and accurate copy of the contract Johnstone received.

159. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Johnstone.

160. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

161. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

162. The Defendants have not delivered the windows, completed the work, nor issued a refund to Johnstone.

FF. Allegations Related to Defendants' Consumer Transaction with Luis Montes

163. On or about October 22, 2007 Defendants entered into a contract with Luis Montes ("Montes") of Indianapolis, Indiana, wherein the Defendants represented they would sell and install Thirteen (13) windows in Montes' home, for a total price of Two Thousand Eight Hundred Eighty Dollars (\$2,880.00), of which Montes paid One Thousand Dollars (\$1,000.00) as a down payment. Attached and incorporated by reference as "Exhibit FF" is a true and accurate copy of the contract Montes received.

164. The Defendants failed to include a legible printed or typed version of each party's name directly after or below the signature on the contract in their contract with Montes.

165. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

166. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

167. The Defendants have not delivered the windows, completed the work, nor issued a refund to Montes.

GG. Allegations Related to Defendants' Consumer Transaction with Dale Wood

168. On or about November 11, 2007 Defendants entered into a contract with Dale Wood ("Wood") of Danville, Indiana, wherein the Defendants represented they would sell and install windows in Woods' home, for which Woods paid One Thousand Eight Hundred Five Dollars (\$1,805.00) as a down payment.

169. At the time of the contract formation the Defendants represented that the delivery and installation of the windows would commence in approximately four to six weeks.

170. The Defendants have not delivered the windows, completed the work, nor issued a refund to Woods.

COUNT I – VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS

ACT

171. The services described in paragraphs 7, 13, 18, 23, 28, 33, 38, 43, 48, 53, 58, 63, 68, 73, 78, 83, 88, 93, 98, 103, 108, 113, 118, 123, 128, 133, 138, 143, 148, 153, 158, 163, and 168 are “home improvements” as defined by Ind. Code § 24-5-11-3.

172. The transactions referred to in paragraphs 7, 13, 18, 23, 28, 33, 38, 43, 48, 53, 58, 63, 68, 73, 78, 83, 88, 93, 98, 103, 108, 113, 118, 123, 128, 133, 138, 143, 148, 153, 158, 163, 168 are “home improvement contracts” as defined by Ind. Code § 24-5-11-4.

173. The Defendants are “suppliers” as defined by Ind. Code 24-5-11-6.

174. In failing to provide the consumers with completed home improvement contracts containing the information referred to in paragraphs 8, 14, 19, 24, 29, 34, 39, 44, 49, 54, 59, 64, 69, 74, 79, 84, 89, 94, 99, 104, 109, 114, 119, 124, 129, 134, 139, 144, 149, 154, 156, and 164 the Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

175. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 174 above.

176. The Defendants' violations of the Indiana Home Improvement Contracts Act, referred to in paragraphs 7, 8, 9, 13, 14, 15, 18, 19, 20, 23, 24, 25, 28, 29, 30, 33, 34, 35, 38, 39, 40, 43, 44, 45, 48, 49, 50, 53, 54, 55, 58, 59, 60, 63, 64, 65, 68, 69, 70, 73, 74, 75, 78, 80, 83, 84, 85, 88, 89, 90, 93, 94, 95, 98, 99, 100, 103, 104, 105, 108, 109, 120, 123, 124, 125, 128, 130, 133, 134, 135, 138, 139, 140, 143, 144, 145, 148, 149, 150, 153, 154, 155, 158, 159, 160, 163, 164, and 165 constitute deceptive acts by the Defendants, in accordance with Ind. Code § 24-5-11-14.

177. By failing to obtain a proper permit prior to engaging in a consumer transaction, as referenced in paragraph 10, the Defendants violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1).

178. The Defendants' representations to consumers that the Defendants would be able to deliver or complete the subject of the consumer transaction within a stated or reasonable period of time, when the Defendants knew or reasonably should have known they could not, as referenced in paragraphs 11, 12, 16, 17, 21, 22, 26, 27, 31, 32, 36, 37, 41, 42, 46, 47, 51, 52, 56, 57, 61, 62, 66, 67, 71, 72, 76, 77, 81, 82, 86, 87, 91, 92, 96, 97, 101, 102, 106, 107, 111, 112, 116, 117, 121, 122, 126, 127, 131, 132, 136, 137, 141, 142, 146, 147, 151, 152, 156, 157, 161, 162, 166, 167, 169, and 170 constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

179. The Defendants' representations to consumers that the windows had sponsorship, approval, performance, characteristics, accessories, uses, or benefits the Defendants knew or reasonably should have known the windows did not have, as referenced in paragraphs 13, 16, 17, 18, 21, 22, 23, 26, 27, 28, 31, 32, 33, 36, 37, 38, 41, 42, 43, 46, 47, 48, 51, 52, 53, 56, 57, 58, 61, 62, 63, 66, 67, 68, 71, 72, 73, 76, 77, 78, 81,

82, 83, 86, 87, 88, 91, 92, 93, 96, 97, 98, 101, 102, 103, 106, 107, 108, 111, 112, 113, 116, 117, 118, 121, 122, 123, 126, 127, 128, 131, 132, 133, 136, 137, 138, 141, 142, 143, 146, 147, 148, 151, 152, 153, 156, 157, 158, 161, 162, 163, 166, 167, 169 and 170 constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

180. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 179 above.

181. The deceptive acts set forth in paragraphs 7 through 170 were committed by the Defendants with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Rod Hardesty and Nathan Mertz, individually and doing business as Advanced Exteriors and Windows Direct Midwest, enjoining the Defendants from the following:

- a. in the course of entering into home improvement transactions, failing to provide the consumer a written, completed home improvement contract, which includes at a minimum the following:
 - i) The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - ii) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

- iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
 - iv) A reasonably detailed description of the proposed home improvements;
 - v) If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
 - vi) The approximate starting and completion date of the home improvements;
 - vii) A statement of any contingencies that would materially change the approximate completion date;
 - viii) The home improvement contract price; and
 - ix) Signature lines for the Defendants or the Defendants' agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer;

- c. soliciting or engaging in home improvement transactions without a license or permit as required by law;
- d. representing, expressly or by implication, that Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendants know or should reasonably know they cannot.

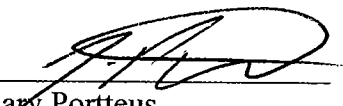
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter a judgment against Defendants for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including but not limited to the consumers identified in paragraphs 7, 13, 18, 23, 28, 33, 38, 43, 48, 53, 58, 63, 68, 73, 78, 83, 88, 93, 98, 103, 108, 113, 118, 123, 128, 133, 138, 143, 148, 153, 158, 163, and 168 pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendants, including but not limited to the consumers identified in paragraphs 7, 13, 18, 23, 28, 33, 38, 43, 48, 53, 58, 63, 68, 73, 78, 83, 88, 93, 98, 103, 108, 113, 118, 123, 128, 133, 138, 143, 148, 153, 158, 163, and 168 in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully Submitted,

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By: 
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